

Message Text

LIMITED OFFICIAL USE

PAGE 01 USBERL 02635 081656Z

67

ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-01 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

ERDA-05 AID-05 CEA-01 CIEP-01 COME-00 EB-07 FPC-01

INT-05 OMB-01 OES-06 STR-04 TRSE-00 ACDA-07 FEA-01

IO-13 /115 W

----- 044976

R 081615Z DEC 76

FM USMISSION USBERLIN

TO SECSTATE WASHDC 3565

INFO AMEMBASSY BONN

AMEMBASSY BERLIN UNN

LIMITED OFFICIAL USE USBERLIN 2635

E.O.11652: N/A

TAGS: ENRG, PGOV, SENV, WB

SUBJ: COURT ORDERS DELAY IN ELECTRIC POWER PROJECT

REF: USBERLIN 2530

1. SUMMARY:

A BERLIN COURT HAS ISSUED TEMPORARY
RESTRAINING ORDER PREVENTING TREE CUTTING ON SITE OF
PROPOSED NEW POWER PLANT. THIS MARKS FIRST STEP IN
WHAT PROMISES TO BE TEDIOUS AND DRAWN OUT JUDICIAL
BATTLE WHICH MAY DELAY CONSTRUCTION BY A YEAR OR
MORE, PLACING ADEQUACY OF BERLIN ELECTRIC POWER IN
QUESTION FOR PERIOD EARLY 1981 ONWARD.
END SUMMARY.

2. A BERLIN ADMINISTRATIVE COURT ON DECEMBER 6 ISSUED
A TEMPORARY RESTRAINING ORDER FORBIDDING SENAT AND
ELECTRIC POWER COMPANY (BEWAG) TO START CLEARING TREES
FROM SITE OF PROPOSED NEW 600-MW THERMAL POWER PLANT.
SUIT WAS FILED IN NOVEMBER IN NAME OF TWO INFANTS,
INTENDED SYMBOLICALLY TO REPRESENT " BERLIN 'S FUTURE, "
AND TWO CRIPPLED PERSONS RESIDENT IN AN OLD-FOLKS HOME
NEAR SITE. COURT'S DECISION WAS BASED ON WRITTEN
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USBERL 02635 081656Z

SUBMISSIONS ONLY AND SENAT WAS GIVEN ONLY ONE WEEK

TO PREPARE AND FILE ITS STATEMENT. DECISION BANS CUTTING OF ANY TREES ON THE SITE, WORK THAT HAD BEEN SCHEDULED TO START NEXT WEEK, PENDING FINAL ACTION UNDER THE NEW FEDERAL LAW ON PROTECTION AGAINST NUISANCES ON APPLICATIONS TO CONSTRUCT COOLING TOWER AND BOILERS. COURT HELD THAT ALLOWING TREES TO BE CUT NOW WOULD IN FACT, IF NOT IN LAW, FAVORABLY PREJUDICE EVENTUAL ADMINISTRATIVE DECISIONS ON THESE APPLICATIONS, A POINT OF LAW WHICH SENAT IS DISPUTING.

3. UNDER THE FEDERAL NUISANCE LAW, EXPERIENCE WITH WHICH IN BERLIN IS SCANTY UP TO NOW, CONSTRUCTION APPLICATIONS BY BEWAG MUST BE PLACED BEFORE APPROPRIATE SENAT DEPARTMENTS AND FOR TWO MONTHS MUST BE OPEN FOR PUBLIC INSPECTION. DURING THIS PERIOD, ANY MEMBER OF THE PUBLIC CAN FILE OBJECTIONS TO THE APPLICATIONS. OBJECTIONS MUST THEN AT SOME POINT BE DISCUSSED BY THE PARTIES CONCERNED, AND MUST BE TAKEN INTO ACCOUNT BY SENAT DEPARTMENTS IN REACHING THEIR DECISIONS. ONCE DECISIONS ARE RENDERED, THEY MAY BE ATTACKED IN COURT BY ANYONE WHO WISHES. THUS THE WAY IS OPENED FOR PROTRACTED AND TEDIOUS LITIGATION WHICH PLACES THE FUTURE OF BERLIN'S NEXT POWER PLANT IN MURKY SITUATION.

4. IT IS GENERALLY ASSUMED THAT ADMINISTRATIVE COURT'S DECISION JUST TAKEN WILL DELAY PROGRESS ON POWER PLANT BY A YEAR OR MORE. SENAT HAS REACTED TO COURT DECISION WITH "GREAT CONCERN", HAS STATED THAT POWER SHORTAGES ARE NOW THREATENED FROM WINTER 1980/81 ONWARD, AND THAT SENAT WILL VIGOROUSLY PURSUE THE MATTER WITH EVERY LEGAL MEANS AVAILABLE. ITS FIRST STEP HAS BEEN TO REQUEST AN ORAL HEARING BEFORE THE SAME COURT, WHICH WILL BE HELD DECEMBER 15. IF COURT CONFIRMS ITS INITIAL ORDER, SENAT WILL PRESUMABLY APPEAL AND SEEK INFORMALLY TO EXPEDITE NEXT HEARING AS MUCH AS POSSIBLE. THERE IS LITTLE OPTIMISM HERE THAT COURT ORDER WILL BE REVERSED. A NEAR GROTESQUE NOTE EMERGES IN THAT ANATURE-PROTECTION ORDINANCE IN EFFECT IN BERLIN PROHIBITS "INTERVENTIONS" AGAINST FORESTS BETWEEN MARCH AND SEPTEMBER OF EACH YEAR. THUS SHOULD THE EMISSIONS-PROTECTION QUESTION BE SETTLED LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USBERL 02635 081656Z

IN MARCH OR APRIL, CLEARING OF TREES FROM SITE MIGHT STILL HAVE TO WAIT THE AUTUMN.

5. SENAT HAS CALCULATED AHT CONSTRUCTION OF POWER PLANT WILL REQUIRE SOME 100 BUREAUCRATIC PROCESSES, TESTS, PERMITS, ETCETERA. WHILE BEWAG NORMALLY HAS A COUPLE OF YEARS TO SETTLE THESE MATTERS WITH BUREAUCRACY, LITTLE HAS BEEN DONE IN PRESENT CASE SO FAR BECAUSE OF LONG DELAY

IN SENAT DECISION ON WHERE PLANT SHOULD BE LOCATED.

6. POWER PLANT SITE CONTINUES TO BE OCCUPIED BY
SQUATTERS DRAWING CROWDS OF SYMPATHIZERS AND THE CURIOUS ON
WEEK-ENDS. NO EFFORT HAS BEEN MADE TO REMOVE THEM AND NO
SIGNIFICANT INCIDENTS HAVE OCCURRED SINCE REFTEL.
GEORGE

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSTRUCTION, ELECTRIC POWER PLANTS, COURT DECISIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 08 DEC 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USBERL02635
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760454-0570
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19761260/aaaabzxl.tel
Line Count: 122
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 76 USBERLIN 2530
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 28 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <28 APR 2004 by MartinML>; APPROVED <19 AUG 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COURT ORDERS DELAY IN ELECTRIC POWER PROJECT
TAGS: ENRG, PGOV, SENV, WB
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006